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RS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

22 EDGE ELECTRONICS, INC.,
 23 a New York corporation,

Plaintiff,

v.

25 HYNIX SEMICONDUCTOR, INC., a
 26 Korean corporation, HYNIX
 SEMICONDUCTOR AMERICA, INC., a
 27 California corporation, MOSEL VITELIC
 28 INC., a Taiwanese corporation, MOSEL
 VITELIC CORPORATION, a California

Case No.

COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF

(1) VIOLATION OF THE
 SHERMAN ACT
 PURSUANT TO
 15 U.S.C. § 1

BY FAX

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corporation, NANYA TECHNOLOGY CORPORATION, a Taiwanese corporation, NANYA TECHNOLOGY CORPORATION, USA, a California corporation, WINBOND ELECTRONICS CORPORATION, a Taiwanese corporation, WINBOND ELECTRONICS CORPORATION AMERICA, a Delaware corporation, ELPIDA MEMORY, INC., a Japanese corporation, ELPIDA MEMORY (USA) INC., a Delaware corporation, MITSUBISHI ELECTRIC CORPORATION, a Japanese corporation, MITSUBISHI ELECTRIC AND ELECTRONICS USA, INC., a Delaware corporation, INFINEON TECHNOLOGIES AG, a German corporation, INFINEON TECHNOLOGIES NORTH AMERICA CORPORATION, a Delaware corporation, SAMSUNG ELECTRONICS CO., LTD., a Korean corporation, SAMSUNG SEMICONDUCTOR, INC., a California Corporation, and DOES 1 through 5,

Defendants.

(2) **VIOLATION OF CALIFORNIA'S CARTWRIGHT ACT PURSUANT TO §§ 16700 ET SEQ. CAL. BUS. & PROF. CODE**

(3) **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION ACT PURSUANT TO §§ 17200 ET SEQ. OF CAL. BUS. & PROF. CODE**

DEMAND FOR JURY TRIAL

Plaintiff Edge Electronics Inc., for its Complaint against defendants Hynix Semiconductor, Inc.; Hynix Semiconductor America, Inc.; Mosel Vitelic Inc.; Mosel Vitelic Corporation; Nanya Technology Corporation; Nanya Technology Corporation (USA); Winbond Electronics Corporation; Winbond Electronics Corporation America; Elpida Memory, Inc.; Elpida Memory (USA), Inc.; Mitsubishi Electric Corporation; Mitsubishi Electric and Electronics USA, Inc.; Infineon Technologies AG; Infineon Technologies North America Corporation; Samsung Electronics Co. Ltd; Samsung Semiconductor, Inc.; and Doe defendants 1 through 5, alleges as follows:

A. Nature of Action

1. Plaintiff Edge Electronics Inc. ("Edge" or "Plaintiff") brings this action to recover damages it has incurred as a result of long-standing collusion by suppliers of dynamic random access memory ("DRAM") computer chips. As described in more detail below, in June 2002 the United States Department of Justice announced that it had begun to investigate a conspiracy among the world's DRAM suppliers. During the conspiracy, DRAM suppliers conspired to control production capacity, raise prices or

1 slow their decline, allocate customers, and otherwise unlawfully overcharge their DRAM
2 customers. During that same period of time, Edge purchased several million dollars of
3 DRAM chips from the conspirators.

4 2. As a result of the Department of Justice's investigation, five of the world's
5 largest suppliers of DRAM chips have now admitted their involvement in the conspiracy,
6 including Hynix Semiconductor, Inc., Infineon Technologies AG, Elpida Memory, Inc.,
7 and Samsung Electronics Co. Ltd. Infineon Technologies AG, Hynix Semiconductor,
8 Inc., Samsung Semiconductor Co. Ltd. and Elpida Memory, Inc. have agreed to enter
9 guilty pleas and pay fines based on their involvement in the illegal activities.
10 Furthermore, senior officials of Hynix Semiconductor, Inc., Samsung Electronics Co.
11 Ltd., and Infineon Technologies AG have pleaded guilty to colluding with their
12 competitors to fix and raise DRAM prices. The Department of Justice investigation is
13 continuing, and additional guilty pleas from other conspirators are expected.

14 3. Plaintiff seeks treble damages and injunctive relief to remedy injuries it has
15 sustained as a result of the defendants' illegal activities.

16 **B. Jurisdiction and Venue**

17 4. Plaintiff brings this action pursuant to Sections 4, 12, and 16 of the Clayton
18 Act (15 U.S.C. § § 15, 22, and 26) (2000 suppl. 2) for treble damages and injunctive
19 relief, as well as reasonable attorneys' fees and costs, with respect to the injuries it has
20 sustained arising from violations by the defendants of Section 1 of the Sherman Act, 15
21 U.S.C. § 1 (2000 suppl. 2).

22 5. Plaintiff also brings this action pursuant to Section 16750(a) of the
23 California Business and Professions Code, for injunctive relief and treble damages that
24 Plaintiff has sustained due to violations by the defendants and their co-conspirators of
25 Section 16700 *et seq.* of the California Business and Professions Code (the "Cartwright
26 Act"). Plaintiffs' claims are also brought pursuant to Sections 17203 and 17204 of the
27 California Business and Professions Code, to obtain restitution from and an injunction
28

1 against the defendants due to their violations of Section 17200 *et seq.* of the California
2 Business and Professions Code (the "Unfair Competition Act").

3 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331
4 and 1337(a). This Court has supplemental jurisdiction over Plaintiff's state law claims
5 pursuant to 28 U.S.C. § 1367 because those claims are related to the federal claims such
6 that they form part of the same case or controversy.

7 7. This Court has jurisdiction over this action pursuant to the Foreign Trade
8 Antitrust Improvements Act, 15 U.S.C. § 6a (2000 suppl. 2), in that Plaintiff's injuries
9 were proximately caused by increased prices for DRAM in the United States.

10 8. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15 and 22,
11 and 28 U.S.C. § 1391(b), (c), and (d), in that at least one of the defendants resides in this
12 judicial district or is licensed to do business or is doing business in this judicial district.
13 Venue as to each defendant also is proper in this judicial district pursuant to the
14 provisions of Sections 16750(a) and 17203 of the California Business and Professions
15 Code. The unlawful conduct undertaken pursuant to the combination and conspiracy
16 alleged herein had and has a direct effect on business within the State of California, and
17 the trade and commerce described below is carried on to a significant degree within the
18 State of California.

19 9. This Court has in personam jurisdiction over each of the defendants
20 because, inter alia, each defendant (a) transacted business throughout the United States,
21 including this district; (b) manufactured, sold, shipped, and delivered substantial
22 quantities of DRAM throughout the United States, including this district; (c) had
23 substantial contacts with the United States; and (d) was engaged in an illegal scheme and
24 price-fixing conspiracy that was directed at and had the intended effect of causing injury
25 to persons and entities residing in, located in, or doing business throughout the United
26 States.

1 **C. Intradistrict Assignment**

2 10. Because a large number of the defendants maintain their principal places of
3 business within Santa Clara County, this action arises in Santa Clara County for the
4 purposes of Civil L.R. 3-2(c), and should be assigned to the San Jose Division.
5 Concurrent with or shortly after the filing of its Complaint, however, Edge will file an
6 Administrative Motion to Consider Whether Cases Should Be Related in the *In re DRAM*
7 *Antitrust Litigation*, MDL 02-1486 PJH in the United States District Court for the
8 Northern District of California, San Francisco Division.

9 **D. Parties**

10 11. Edge is a New York corporation with its principal place of business in
11 Bohemia, New York. Edge is a franchised distributor of both commercial and military
12 electronic components serving a worldwide base of OEM customers, with sales in 2006
13 of \$26.5 million. During the relevant timeframe, Edge was a direct purchaser of DRAM
14 from one or more of the defendants and/or their co-conspirators. As a direct purchaser,
15 Edge frequently negotiated with one or more of the defendants and/or their co-
16 conspirators the price of DRAM and memory modules primarily comprised of DRAM.
17 Edge issued all DRAM purchase orders out of and received all shipments and deliveries
18 of DRAM at its New York offices. Furthermore, Edge made all purchasing and pricing
19 decisions for DRAM out of its New York offices. Defendants' and their co-conspirators'
20 price-fixing was the proximate cause of artificially-elevated prices actually paid by Edge
21 for DRAM delivered both throughout the United States and the world. During the
22 relevant timeframe, Edge also negotiated DRAM prices with one or more of the
23 defendants and/or their co-conspirators on behalf of Edge's customers. To the extent
24 Edge was an indirect purchaser of DRAM, the price of that DRAM was artificially
25 inflated, causing Edge to pay a higher price.

26 12. Defendant Hynix Semiconductor, Inc., a Korean corporation, maintains its
27 head offices at San 136-1, Ami-Ri, Bubal-eub, Ichon-si, Kyoungki-do, Korea, 467-701.
28 During the time covered in this complaint, Hynix Semiconductor, Inc., a manufacturer of

1 DRAM, sold and distributed DRAM throughout the world, including the United States.
2 On information and belief, as a Korea-based manufacturer of DRAM with facilities
3 throughout the world, Hynix Semiconductor, Inc. manipulated the price of DRAM
4 charged around the globe, including in the United States, by intentionally restricting the
5 production capacity of its manufacturing plants located in Asia and directing its
6 international affiliates, including those located in the United States, to charge collusively-
7 established prices for DRAM. As a result of Hynix Semiconductor, Inc.'s illegal
8 activities directed at the United States and elsewhere, Edge paid artificially-inflated
9 prices for DRAM.

10 13. Defendant Hynix Semiconductor America, Inc. is a California corporation
11 located at 3101 North First Street, San Jose, California 95134. Hynix Semiconductor
12 America, Inc., on information and belief, is a wholly-owned and controlled subsidiary of
13 defendant Hynix Semiconductor, Inc. (collectively referred to as "Hynix"). During the
14 time period covered in this complaint, Hynix Semiconductor America, Inc. sold and
15 distributed DRAM throughout the United States.

16 14. Defendant Mosel Vitelic Inc. is a Taiwanese corporation which maintains
17 its headquarters at No. 1 Creation Road 1, Hsinchu Science Park, Hsinchu, Taiwan,
18 30077, R.O.C. During the time period covered in this complaint, Mosel Vitelic Inc., a
19 manufacturer of DRAM, sold and distributed DRAM throughout the world, including the
20 United States. On information and belief, as a Taiwan-based manufacturer of DRAM
21 with facilities throughout the world, Mosel Vitelic Inc. manipulated the price of DRAM
22 charged around the globe, including in the United States, by intentionally restricting the
23 production capacity of its manufacturing plants located in Asia and directing its
24 international affiliates, including those located in the United States, to charge collusively-
25 established prices for DRAM. As a result of Mosel Vitelic Inc.'s illegal activities
26 directed at the United States and elsewhere, Edge paid artificially-inflated prices for
27 DRAM.

1 15. Defendant Mosel Vitelic Corporation is a California corporation located at
2 3910 North First Street, San Jose, California 95314. Mosel Vitelic Corporation, on
3 information and belief, is a wholly-owned and controlled subsidiary of defendant Mosel
4 Vitelic Inc. (collectively referred to as "Mosel Vitelic"). During the time period covered
5 in this complaint, Mosel Vitelic Corporation sold and distributed DRAM throughout the
6 United States.

7 16. Defendant Nanya Technology Corporation is a Taiwanese corporation
8 which maintains its headquarters at Hwa Ya Technology Park, 669, Fu Hsing 3rd Rd.,
9 Keuishan, Taoyuan, Taiwan, 333. During the time period covered in this complaint,
10 Nanya Technology Corporation, a manufacturer of DRAM, sold and distributed DRAM
11 throughout the world, including the United States. On information and belief, as a
12 Taiwan-based manufacturer of DRAM with facilities throughout the world, Nanya
13 Technology Corporation manipulated the price of DRAM charged around the globe,
14 including in the United States, by intentionally restricting the production capacity of its
15 manufacturing plants located in Asia and directing its international affiliates, including
16 those located in the United States, to charge collusively-established prices for DRAM.
17 As a result of Nanya Technology Corporation's illegal activities directed at the United
18 States and elsewhere, Edge paid artificially-inflated prices for DRAM.

19 17. Defendant Nanya Technology Corporation, USA, a California corporation,
20 is located at 675 E. Brokaw Road, San Jose, California 95112. On information and
21 belief, Nanya Technology Corporation USA is a wholly-owned and controlled subsidiary
22 of defendant Nanya Technology Corporation (collectively referred to as "Nanya"). In
23 addition to its main U.S. office in San Jose, Nanya Technology Corporation operates
24 sales and technical support offices in San Jose, California, Raleigh, North Carolina, and
25 Austin, Texas and operates a memory design center in Houston, Texas. During the time
26 period covered in this complaint, Nanya Technology Corporation USA sold and
27 distributed DRAM throughout the United States.

1 18. Defendant Winbond Electronics Corporation is headquartered at No. 4,
2 Creation Road 3 and No. 9, Li-Shin Road, Science-Based Industrial Park, Hsinchu,
3 Taiwan, 300, R.O.C. During the time period covered in this complaint, Winbond
4 Electronics Corporation, a manufacturer of DRAM, sold and distributed DRAM
5 throughout the world, including the United States. On information and belief, as a
6 Taiwan-based manufacturer of DRAM with facilities throughout the world, Winbond
7 Electronics Corporation manipulated the price of DRAM charged around the globe,
8 including in the United States, by intentionally restricting the production capacity of its
9 manufacturing plants located in Asia and directing its international affiliates, including
10 those located in the United States, to charge collusively-established prices for DRAM.
11 As a result of Winbond Electronics Corporation's illegal activities directed at the United
12 States and elsewhere, Edge paid artificially-inflated prices for DRAM.

13 19. Defendant Winbond Electronics Corporation America, a Delaware
14 corporation, is located at 2727 North First Street, San Jose, California 95134 and is a
15 wholly-owned subsidiary of Winbond Electronics Corporation (collectively referred to as
16 "Winbond"). During the time period covered in this complaint, Winbond Electronics
17 Corporation America sold and distributed DRAM throughout the United States.

18 20. Defendant Elpida Memory, Inc., a Japanese corporation, maintains its
19 executive offices at Sumitomo Seimei Yaesu Building, 3F, 2-1 Yaesu 2-chome, Chuo-ku,
20 Tokyo, 104-0028, Japan. During the time period covered in this complaint, Elpida
21 Memory, Inc., a manufacturer of DRAM, sold and distributed DRAM throughout the
22 world, including the United States. On information and belief, as a Japan-based
23 manufacturer of DRAM with facilities throughout the world, Elpida Memory, Inc.
24 manipulated the price of DRAM charged around the globe, including in the United
25 States, by intentionally restricting the production capacity of its manufacturing plants
26 located in Asia and directing its international affiliates, including those located in the
27 United States, to charge collusively-established prices for DRAM. As a result of Elpida
28

1 Memory, Inc.'s illegal activities directed at the United States and elsewhere, Edge paid
2 artificially-inflated prices for DRAM.

3 21. Defendant Elpida Memory (USA) Inc., a Delaware corporation, is located
4 at 2001 Walsh Ave, Santa Clara, California, 95050 and is a wholly-owned subsidiary of
5 Elpida Memory, Inc. (collectively referred to as "Elpida"). During the time period
6 covered in this complaint, Elpida Memory (USA) Inc. sold and distributed DRAM
7 throughout the United States.

8 22. Defendant Mitsubishi Electric Corporation, a Japanese corporation, is
9 headquartered at Tokyo Building, 2-7-3, Marunouchi, Chiyoda-ku, Tokyo 100-8310,
10 Japan. During the time period covered in this complaint, Mitsubishi Electric
11 Corporation, a manufacturer of DRAM, sold and distributed DRAM throughout the
12 world, including the United States. On information and belief, as a Japan-based
13 manufacturer of DRAM with facilities throughout the world, Mitsubishi Electric
14 Corporation manipulated the price of DRAM charged around the globe, including in the
15 United States, by intentionally restricting the production capacity of its manufacturing
16 plants located in Asia and directing its international affiliates, including those located in
17 the United States, to charge collusively-established prices for DRAM. As a result of
18 Mitsubishi Electric Corporation's illegal activities directed at the United States and
19 elsewhere, Edge paid artificially-inflated prices for DRAM.

20 23. Defendant Mitsubishi Electric and Electronics USA, Inc., a Delaware
21 corporation, is headquartered at 5665 Plaza Drive, Cypress, CA 90630-0003 and is a
22 wholly-owned subsidiary of Mitsubishi Electric Corporation. During the time period
23 covered in this complaint, Mitsubishi Electric and Electronics USA, Inc. sold and
24 distributed DRAM throughout the United States.

25 24. Defendant Infineon Technologies AG, a German corporation, has its
26 principal place of business at Am Campeon 1-12, Munich, 85579, Germany. During the
27 time period covered in this complaint, Infineon Technologies AG, a manufacturer of
28 DRAM, sold and distributed DRAM throughout the world, including the United States.

1 On information and belief, as a Germany-based manufacturer of DRAM with facilities
2 throughout the world, Infineon Technologies AG manipulated the price of DRAM
3 charged around the globe, including in the United States, by intentionally restricting the
4 production capacity of its manufacturing plants located throughout the world and
5 directing its international affiliates, including those located in the United States, to charge
6 collusively-established prices for DRAM. As a result of Infineon Technology AG's
7 illegal activities directed at the United States and elsewhere, Edge paid artificially-
8 inflated prices for DRAM.

9 25. Defendant Infineon Technologies North America Corporation, a Delaware
10 corporation and a wholly-owned subsidiary of Infineon Technologies AG (collectively,
11 "Infineon"), has its principal place of business at 640 N. McCarthy Blvd., Milipitas,
12 California 95035. During the time period covered in this complaint, Infineon
13 Technologies North America Corporation sold and distributed DRAM throughout the
14 United States. Recently, Infineon spun-off its DRAM business, which is now operating
15 as Qimonda, a wholly-owned subsidiary of Infineon Technologies AG.

16 26. Defendant Samsung Electronics Co., Ltd., a Korean corporation, has its
17 principal place of business at 750 2-ga Taepyong-ro, Chung-gu, Seoul, 100-742, Korea.
18 During the time period covered in this complaint, Samsung Electronics Co., Ltd., a
19 manufacturer of DRAM, sold and distributed DRAM throughout the world, including the
20 United States. On information and belief, as a Korea-based manufacturer of DRAM with
21 facilities throughout the world, Samsung Electronics Co., Ltd. manipulated the price of
22 DRAM charged around the globe, including in the United States, by intentionally
23 restricting the production capacity of its manufacturing plants located in Asia and
24 directing its international affiliates, including those located in the United States, to charge
25 collusively-established prices for DRAM. As a result of Samsung Electronics Co., Ltd.'s
26 illegal activities directed at the United States and elsewhere, Edge paid artificially-
27 inflated prices for DRAM.

27. Defendant Samsung Semiconductor, Inc., a California corporation and a wholly-owned subsidiary of Samsung Electronics Co., Ltd. (collectively, "Samsung"), has its principal place of business at 3655 North First Street, San Jose, California, 95134. During the time period covered in this complaint, Samsung Semiconductor, Inc. sold and distributed DRAM throughout the United States.

28. Doe defendants 1 through 5 are persons whose identities are as yet unknown to Plaintiff and who have participated in the violations of the federal and state antitrust laws for which Plaintiff seeks relief, and have performed acts and made statements in furtherance thereof.

29. Various individuals, partnerships, corporations, and associations other than the defendants named in this complaint (the "Co-conspirators" and jointly with the named defendants, "Defendants") have participated in the violations of the federal and state antitrust laws for which Plaintiff seeks relief, and have performed acts and made statements in furtherance thereof.

30. Whenever in this complaint reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the corporation's business or affairs.

E. Trade and Commerce

31. During the relevant period, Defendants sold and shipped substantial quantities of DRAM in a continuous and uninterrupted flow of interstate and international commerce to customers located in countries and states other than the countries and states in which Defendants manufacture DRAM.

32. The business activities of Defendants that are the subject of this Complaint were within the flow of, and substantially affected, interstate and international trade and commerce. The global conspiracy, in which the Defendants participated, had a direct, substantial, and reasonably foreseeable effect on United States commerce.

1 33. During the relevant period, Defendants made most of the DRAM sales in
2 the global market.

3 **F. Statement of Facts**

4 34. Defendants manufacture, sell, and distribute memory chips throughout the
5 world. Memory chips store data in a wide variety of computing and electronic devices.
6 Memory chips are used in the manufacture of, and are critical to the functioning of, such
7 devices as personal computers, workstations, servers, printers, fax machines, digital
8 cameras and video recorders, video game equipment, personal digital assistants, and
9 cellular and wireless telephones.

10 35. DRAM is the dominant, most common form of memory chip. "Random
11 Access Memory" means that the data, stored in the form of 0s and 1s, can be accessed
12 directly from any part of the memory, rather than having to proceed sequentially from
13 some starting place. DRAM is called "dynamic" because it must have its storage cells
14 refreshed or given a new electronic charge every few milliseconds.

15 36. A DRAM chip is a large-scale integrated circuit with simple structures, and
16 is fairly easy to manufacture. Accordingly, DRAM is a commodity, with each of
17 Defendants' products being freely interchangeable with the products of another company.

18 37. DRAM is sold in individual chips, or in modules with several chips
19 attached to each module.

20 38. DRAM sales exceed \$20 billion a year. The world's top four makers of
21 DRAM, all of whom are Defendants herein, control roughly 70% of the market; the top
22 six manufacturers control 96% of the market.

23 39. The DRAM industry enjoyed an extended period of prosperity in the mid-
24 1990s as the PC computer industry boomed. During this time DRAM manufacturers
25 could not meet the demand for their products. Revenues from DRAM sales nearly tripled
26 between 1993 and 1995. DRAM manufacturers responded by building substantial new
27 chip-making capacity. Factories for the manufacture of DRAM chips are referred to as
28 fabrication plants, or "fabs."

1 40. In 1996, this new capacity, coupled with demand decline, led to pressure on
2 Defendants to cut their prices. Defendants responded by illegally conspiring to limit
3 capacity and artificially fix and raise prices.

4 41. Specifically, in December 1996, DRAM manufacturers attended a
5 SyncLink Consortium. SyncLink was a DRAM industry organization whose members
6 consisted of DRAM suppliers. During this December 1996 meeting, DRAM suppliers
7 resolved to establish unified strategies to address market concerns. Although the
8 organization initially appears to have been created to address technology concerns, the
9 industry reorganized the consortium in January 1999, causing the new president of the
10 organization to acknowledge publicly that the focus of the group would be to
11 “co-ordinate instead of develop new technology.”

12 42. Executives from DRAM suppliers met again in Japan in January 1997.
13 During this meeting the participants agreed that they would need to continue
14 communicating with each other. The participants also agreed to use an e-mail
15 distribution software program then known as a reflector e-mail, which permitted industry
16 executives to exchange information via e-mail quickly and confidentially.

17 43. Shortly after this meeting, in February 1997, DRAM suppliers curtailed
18 production at their DRAM manufacturing facilities as part of a collusive effort to
19 maintain and raise prices.

20 44. This coordinated drop in production had an immediate, but temporary,
21 effect on prices, which rose during the second quarter of 1997. Prices then began to fall
22 again in the second half of 1997.

23 45. As DRAM prices continued to fall into early 1998, DRAM manufacturers
24 held at least two meetings to discuss the problem in April and June. The second meeting,
25 held on June 25, was called an “Executive Summit” and was attended by industry
26 executives. One of the topics at the Summit was how to “Manage Price Competition,
27 Profitability.” Upon information and belief, during these meetings, and in
28 communications before and after these meetings, Defendants discussed supply and

1 pricing issues, and agreed that they would limit their capacity to artificially decrease the
 2 supply of, and increase, maintain, or control the price of, DRAM chips.

3 46. Between June and September of 1998 every major DRAM manufacturer
 4 announced that it was curtailing or shutting down DRAM production facilities because of
 5 a lack of demand for the product. Hynix's corporate predecessor, Hyundai,¹ and
 6 Samsung each shut down their facilities for approximately one to two weeks in the
 7 summer of 1998. Other suppliers communicated their intentions to slash production.

8 47. This coordinated withdrawal of production capacity had an immediate
 9 effect on prices, which began to rise in June 1998, and increased steadily throughout the
 10 rest of the year.

11 48. In August 1998, an email circulated among DRAM suppliers, which
 12 warned that during the ramp-up in production of a new DRAM standard being
 13 implemented by Rambus, DRAM vendors "will need a constant flow of information to
 14 help make wise decisions and to walk the fine line between a pleasant shortage and a
 15 disastrous over-supply." A Hyundai executive noted that a shortage would please
 16 DRAM manufacturers because "prices go up."

17 49. A former employee of Samsung, Devin Cole, has admitted that before he
 18 left Samsung in July 1998, he spoke with competitors regarding price issues. Cole
 19 informed federal authorities that these conversations led to agreements on a "range pact"
 20 that included "the ranges of prices, where each competitor felt that others would price in
 21 the range, and whether each competitor would move prices 'a little' or 'a lot'." Upon
 22 information and belief, this evidence is corroborated by Cole's own notes and other
 23 documents.

24 50. DRAM prices continued to climb steadily in 1999. During this time,
 25 Defendants continued their illegal communications with each other about prices, market
 26

27 ¹ The Hyundai Group's semiconductor subsidiary was named Hyundai Electronics.
 28 In March 2001 Hyundai renamed this subsidiary Hynix Semiconductor. In August
 2001 Hyundai spun off the company.

1 share, and supply. In July 1999, a Hyundai executive sent an e-mail to Farhad Tabrizi,
2 the vice president of marketing for Hyundai and head of the DRAM industry group
3 SLDRAM Inc. (the successor organization to SyncLink). The e-mail states that "[w]ith
4 Samsung building significant amounts of product, we need to work with them to limit the
5 supply in the market, otherwise we both will be competing for market share which will
6 result in an oversupply. We have to meet with Samsung and discuss our and their
7 production plan, TAM analysis and targeted market share." In response, another
8 Hyundai employee stated that he had "a connection" at Samsung and offered to set up a
9 meeting.

10 51. A short time later, Hyundai and Samsung both began raising prices at an
11 accelerated rate. Indeed, in September 1999, industry sources noted that South Korea's
12 DRAM suppliers – Samsung and Hyundai – were raising prices in one-to-two week
13 intervals.

14 52. Despite their unlawful and secret cooperation to reduce DRAM production
15 and increase price, Defendants publicly misrepresented that DRAM prices escalated due
16 to increased demand resulting from strong sales of low-priced PCs incorporating large
17 quantities of DRAM. In a September 13, 1999, Electronic News article, Avo Kanadjian,
18 vice president of marketing for Samsung said: "Because we see the value PC and free
19 PCs entering the market at extraordinary numbers, DRAM oversupply has silently gone
20 into a shortage." Chee-Wai Ho, director of product marketing for memory products at
21 Infineon Technologies AG, agreed.

22 53. Because of Defendants' collusive activities, DRAM prices remained
23 artificially inflated from the middle of 1998 through the fall of 2000.

24 54. In August 2000 prices began to drop once again. By mid-2001, every
25 major DRAM manufacturer was reporting losses. Their stock prices fell. Once again the
26 Defendants responded by conspiring with each other to control production and raise
27 prices. Their collusive activities included, but were not limited to, the following:
28

- 1 • In July 2001, Hynix Semiconductor, Inc. announced plans to cut production
- 2 to boost prices. A spokeswoman for Hynix stated: "We understand other
- 3 companies are also considering cuts."
- 4 • In August 2001, an executive of Mosel-Vitec admitted that Taiwan
- 5 DRAM manufacturers had discussed curtailing production in an effort to
- 6 raise prices.
- 7 • Also in August, Thomas Chang at Mosel Vitec acknowledged talking to
- 8 other Taiwan DRAM manufacturers about reducing supply. "Our
- 9 preliminary agreement is to trim some production starting September."
- 10 • In November, a manager at a Co-conspirator acknowledged efforts of
- 11 defendant Infineon and Samsung to raise prices of DRAM, and stated that
- 12 the Co-conspirator intended to raise prices for all of its OEM customers:
- 13 "The consensus from all suppliers is that if [the Co-conspirator] makes the
- 14 move, all of them will do the same and make it stick."
- 15 • A manager at a Co-conspirator also confirmed that the Co-conspirator
- 16 spoke with competitors about pricing. This manager pleaded guilty in
- 17 January 2004 to federal charges of obstruction of justice, for altering and
- 18 withholding documents responsive to a grand jury subpoena issued to the
- 19 Co-conspirator. At his sentencing hearing, the manager acknowledged that
- 20 these documents consisted of notes that he took during weekly conference
- 21 calls with other regional sales managers of the Co-Conspirator, who like
- 22 this manager were responsible for customers. During these calls the
- 23 managers would discuss price recommendations for customers and the
- 24 prices at which competitors would sell their products to these customers.
- 25 This manager's notes reflected this pricing information and identified
- 26 communications between the Co-conspirator and its competitors about sales
- 27 and pricing.
- 28

1 55. These collusive activities perpetrated by Defendants worked: by the end of
2 2001, the 128 MB DRAM price had increased by 95% over the November 6, 2001, spot
3 price.

4 56. Nevertheless, Defendants again publicly, and falsely, attributed the increase
5 in DRAM price to legitimate market forces. In a December 4, 2001, interview published
6 on Simmtester.com, the chief executive officer of a Co-conspirator, was asked why prices
7 had recently increased sharply and suddenly. He answered:
8 "I have no idea. There clearly was a belated increase in demand as the seasonal rebound
9 we had expected two-and-a-half months earlier finally kicked in. And, clearly the
10 Japanese are cutting back their DRAM production. Even Hynix, which is so
11 unpredictable, cut some production by temporarily closing its Eugene, Ore., fab. When it
12 was running at 40K wafer capacity a month, that fab alone probably had about 2.5% of
13 the world's DRAM production."

14 57. DRAM price increases, as well as Defendants' conspiracy, continued into
15 2002. From November 2001 to April 2002, DRAM prices tripled. And in May 2002,
16 Thomas Chang of Mosel Vitelic stated: "We're trying to encourage a price of US \$3.
17 That's the consensus . . . You don't need to have a meeting. You just need to have a
18 phone call. Everybody knows each other. We just said 'try not to sell below US \$3.'"
19 On the other hand, in a press release issued on April 15, 2002, Hynix represented that its
20 increased revenues resulted from increased demand in the DRAM market.

21 **G. The Department of Justice Investigation**

22 58. On or about September 4, 2004, Infineon Technologies AG entered into a
23 plea agreement with the government, pursuant to which it agreed to plead guilty to
24 conspiring to fix prices in the DRAM market between July 1999 and June 2002.

25 59. On April 21, 2005, the Department of Justice announced that it had entered
26 into a plea agreement with Hynix Semiconductor, Inc. pursuant to which Hynix agreed to
27 plead guilty to conspiring to fix prices in the DRAM market between April 1999 and
28 June 2002.

1 60. On or about October 13, 2005, the Department of Justice announced that it
2 had entered into a plea agreement with Samsung pursuant to which Samsung agreed to
3 plead guilty to conspiring to fix prices in the DRAM market between April 1999 and
4 June 2002.

5 61. Three months later, on January 30, 2006, the Department of Justice
6 announced that it had entered into a plea agreement with Elpida Memory, Inc. pursuant to
7 which Elpida agreed to plead guilty to conspiring to fix prices in the DRAM market
8 between April 1999 and June 2002.

9 **H. Violations Alleged**

10 **FIRST CAUSE OF ACTION**

11 **(Violation of Sherman Act Against All Defendants)**

12 62. Plaintiff incorporates by reference, as if fully set forth, the allegations of
13 paragraphs 1 through 61 of this Complaint.

14 63. Beginning in or about January 1997, the exact date being unknown to
15 Plaintiff, and continuing thereafter at least through 2002 (the Cartel Period), Defendants,
16 by and through their officers, directors, employees, agents, or other representatives,
17 entered in a continuing contract, combination or conspiracy to unreasonably restrain trade
18 and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 (2000
19 suppl. 2).

20 64. Defendants, by their unlawful conspiracy, artificially raised, inflated, and
21 maintained the market price of DRAM as herein alleged.

22 65. The contract, combination, or conspiracy consisted of a continuing
23 agreement, understanding, and concert of action among Defendants, the substantial terms
24 of which were to fix, raise, maintain, and stabilize the prices of, and/or allocate the
25 market for, DRAM they sold throughout the world, including the United States.

26 66. Upon information and belief, for the purposes of formulating and
27 effectuating their contract, combination, or conspiracy, Defendants did those things they
28 contracted, combined or conspired to do, including:

- a. participating in meetings and conversations to discuss the prices of and/or allocate the global market for DRAM;
- b. agreeing to manipulate capacity, production, and prices so as to boost sagging DRAM prices in a manner that deprived direct purchasers of free and open competition;
- c. issuing price announcements and price quotations in accordance with the agreements reached; and
- d. selling DRAM to customers throughout the world, including the United States, at artificially inflated and non-competitive prices.

67. The above combination and conspiracy has had the following effects, among others:

- a. price competition in the sale of DRAM by Defendants has been restrained, suppressed, and eliminated throughout the world, including the United States;
- b. prices for DRAM sold by Defendants have been raised, fixed, maintained, and stabilized at artificially high and noncompetitive levels throughout the world, including the United States; and
- c. purchasers of DRAM from Defendants have been deprived of the benefit of free and open competition in the purchase of DRAM.

68. As a direct and proximate result of the unlawful conduct of Defendants in furtherance of their continuing contract, combination, and/or conspiracy, Plaintiff has been injured in its business and property in that it has paid more for DRAM than it otherwise would have paid in the absence of the Defendants' unlawful price fixing.

SECOND CAUSE OF ACTION

(Violation of California's Cartwright Act Under § § 16700 Et Seq. Of The California Business & Professions Code Against All Defendants)

69. Plaintiff incorporates by reference, as if fully set forth, paragraphs 1 through 68 of this Complaint.

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1 70. Beginning in or about January 1997, the exact date being unknown to
 2 Plaintiff, and continuing thereafter at least through 2002, Defendants by and through their
 3 officers, directors, employees, agents, or other representatives violated Section 16700 *et*
 4 *seq.* of the California Business and Professions Code ("Section 16700" or "Cartwright
 5 Act") by entering into and engaging in a continuing unlawful trust in restraint of trade
 6 and commerce, as described above. During this period, Defendants, and each of them,
 7 have effected this unlawful trust, and violated Section 16700, by combining, conspiring,
 8 and/or agreeing to fix, raise, stabilize, and maintain the prices of, and/or allocate the
 9 market for, DRAM at supra-competitive levels. Section 16720 of the Cartwright Act
 10 expressly forbids the creation of such unlawful trusts.

11 71. The purpose of Defendants' unlawful combination, conspiracy, and/or
 12 agreement was to create artificially higher DRAM prices in the marketplace thereby
 13 providing Defendants, and each of them, with substantially higher revenues and profits
 14 than would otherwise have been the case in a truly competitive market.

15 72. In forming, and in furtherance of, this unlawful combination, conspiracy,
 16 and/or agreement, Defendants engaged in acts, practices, and courses of conduct, which
 17 included, but are not limited to, the following:

- 18 a. participating in meetings and/or discussions amongst themselves, as
 19 discussed more fully above, for the purpose of coordinating DRAM
 20 production reductions to limit supply and fix, raise, stabilize, and
 21 maintain the prices of, and/or allocate the market for, DRAM;
- 22 b. participating in meetings, discussions, and/or communications
 23 amongst themselves, as discussed more fully above, for the purpose
 24 of exchanging information about DRAM prices and setting price
 25 ranges for DRAM to fix, raise, stabilize, and maintain the prices of,
 26 and/or allocate the market for, DRAM;
- 27 c. participating in meetings, discussions, and/or communications
 28 amongst themselves, as discussed more fully above, for the purpose

1 of setting DRAM contract prices for OEM customers to fix, raise,
2 stabilize, and maintain the prices of, and/or allocate the market for,
3 DRAM; and

- 4 d. using their best efforts to ensure that the prices each charged its
5 customers for DRAM were within the price range, or at the same
6 price, agreed to during the meetings, discussions, and/or
7 communications held amongst themselves.

8 73. As a direct consequence of the Defendants' acts, practices, and course of
9 conduct in implementing the unlawful trust, the following have occurred:

- 10 a. DRAM price competition has been restrained, suppressed, and/or
11 eliminated, including, but not limited to, within and throughout the
12 State of California;
- 13 b. DRAM price has been fixed, raised, maintained, and stabilized at a
14 high and artificial level, including, but not limited to, within and
15 throughout the State of California;
- 16 c. Plaintiff has been deprived of the benefit of free and openly
17 competitive negotiations for DRAM in the marketplace; and
- 18 d. Plaintiff has been forced to pay artificially high prices for DRAM for
19 use in its computer systems and network products.

20 74. As a direct and proximate result of Defendants' unlawful combination,
21 conspiracy and/or agreement, Plaintiff has been injured in its business and property in
22 that it had to pay more for DRAM than it would have paid in an otherwise free and open
23 marketplace. Plaintiff is unable to state its damages with precision at this time, because
24 that determination will require discovery and accounting analysis of Defendants' books
25 and records. Nevertheless, under Section 16750(a) of the Business and Professions Code,
26 Plaintiff is entitled to interest on the aforementioned sum from the dates of service of this
27 Complaint until entry of judgment thereon, to its costs of suit, including reasonable
28 attorneys' fees and treble damages.

THIRD CAUSE OF ACTION**(Unfair Competition Under § § 17200 Et Seq. Of****The California Business & Professions Code Against All Defendants)**

75. Plaintiff incorporates by reference, as if fully set forth, paragraphs 1 through 74 of this Complaint.

76. Plaintiff brings this action pursuant to Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution from Defendants for acts, as alleged herein, that violate Section 17200 *et seq.* of the California Business and Professions Code, commonly known as the Unfair Competition Act.

77. Beginning in or about January 1997, the exact date being unknown to Plaintiff, and continuing thereafter at least through 2002, Defendants by and through their officers, directors, employees, agents, or other representatives committed, and continue to commit, acts of unfair competition, as defined by Sections 17200 *et seq.* of the California Business and Professions Code. Defendants' acts of unfair competition, more fully alleged in paragraphs 1 through 74 above, included participating in an unlawful combination, conspiracy, and/or agreement to fix, raise, stabilize, and maintain the prices of, and/or allocate the market for, DRAM prices and making misrepresentations, or fraudulently concealing relevant information, concerning the reason for increased DRAM prices.

78. Plaintiff has standing to bring this action, because it purchased DRAM from Defendants during the period January 1997 to the present. In doing so, Plaintiff was injured by Defendants' unlawful actions, because it paid more for DRAM than it otherwise would have, as described more fully above. These higher prices caused Plaintiff to lose money and customers, who could not afford to purchase Plaintiff's products containing artificially high-priced DRAM.

79. Defendants' conduct as alleged herein violates Section 17200 *et seq.* The unlawful combination, conspiracy, and/or agreement effected by Defendants, as well as their acts, omissions, misrepresentations, practices, and non-disclosures in furtherance

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thereof, as alleged herein, constitute a common continuous and continuing course of conduct of unfair competition by means of unfair, unlawful, and/or fraudulent business acts or practices within the meaning of California Business and Professions Code, Section 17200 *et seq.* including, but in no way limited to, the following:

- a. Defendants' violations of 15 U.S.C. § 1 and Section 16700 *et seq.*, of the California Business and Professions Code, as set forth in Paragraphs 1 through 74, above;
- b. Defendants' acts, omissions, misrepresentations, practices, and non-disclosures regarding how they set DRAM prices, as described in Paragraphs 1 through 74 above – whether or not in violation of 15 U.S.C. § 1 and Section 16700 *et seq.* of the California Business and Professions Code, and whether or not concerted or independent acts – are otherwise unfair, unlawful, or fraudulent;
- c. Defendants' acts and practices, as alleged in paragraphs 1 through 74, are unfair to consumers of DRAM in the State of California and throughout the United States, within the meaning of Section 17200 *et seq.*, California Business and Professions Code; and
- d. Defendants' acts and practices, as alleged in paragraphs 1 through 74, are fraudulent or deceptive within the meaning of Section 17200 *et seq.* of the California Business and Professions Code.

80. The aforementioned unlawful and unfair business practices of Defendants, and each of them, have injured and present a continuing threat of injury to Plaintiff. Defendants' conduct has restrained competition in the DRAM market, has caused Plaintiff to pay supra-competitive and artificially-inflated prices for DRAM, and has deceived, and may continue to deceive, Plaintiff with respect to the manner in which the prices charged for DRAM have been and will be set. Thus, Plaintiff is informed and believes that the Defendants may continue to persist in this conduct and commit the aforementioned acts unless and until the Court orders the Defendants to cease and desist.

81. Defendants have been unjustly enriched as a result of their wrongful conduct and Defendants' unfair competition. Plaintiff is accordingly entitled to equitable relief, including restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits in order to restore money lost by Plaintiff and that may have been obtained by Defendants as a result of such unfair business acts and practices, pursuant to the California Business and Professions Code, Sections 17203 and 17204. In addition, Plaintiff seeks a permanent injunction enjoining Defendants, and their officers, directors, employees, agents, or other representatives, and all others acting in concert with Defendants to cease and desist from colluding together to fix, raise, stabilize, and maintain the prices of, and/or allocate the market for, DRAM prices and making misrepresentations, or fraudulently concealing relevant information, concerning the reason for increased DRAM prices.

I. Tolling of the Applicable Statute of Limitations due to Fraudulent Concealment

82. Plaintiff incorporates by reference, as if fully set forth, the allegations of paragraphs 1 through 81 of this Complaint.

83. Plaintiff had no knowledge of the combination and conspiracy alleged herein, or of any facts that might have led to the discovery thereof in the exercise of reasonable diligence, prior to fall 2004 when Infineon Technologies AG entered into a plea agreement with the United States Department of Justice, pursuant to which Infineon agreed to plead guilty to conspiring to fix prices in the DRAM market between July 1999 and June 2002.

84. Defendants engaged in a successful price-fixing conspiracy concerning DRAM computer chips, which they affirmatively concealed, at least in the following respects:

- a. By meeting secretly to discuss prices, and customers and markets, of DRAM computer chips sold in the U.S. and elsewhere; and

b. By agreeing among themselves at meetings and in communications not to discuss publicly, or otherwise reveal, the nature and substance of the acts and communication in furtherance of the illegal scheme.

85. Price increases of DRAM computer chips before and during the Cartel Period were not unusual. Plaintiff was therefore conditioned by experience in dealing with the Defendants of what it believed to be a competitive industry to expect price increases from time to time.

86. Plaintiff could not have discovered the existence of the combination and conspiracy alleged herein at an earlier date by the exercise of reasonable due diligence because of the deceptive practices and techniques of secrecy employed by the Defendants to avoid detection and affirmatively conceal such violations. Defendants consistently ascribed their price increases to ordinary market forces and consideration including, without limitation, falsely attributing price increases to increased demand, shortages in supply, increased manufacturing costs, increased prices of labor and of raw materials, and/or insufficient production capacity. Such false statements included, without limitation:

- a. The statement of Samsung's vice president of marketing in a September 13, 1999, article, alleged more fully above in paragraph 52, that higher prices were attributable to a DRAM shortage, which was concurred upon by Chee-Wai Ho, director of product marketing for memory products at Infineon Technologies AG; and,
- b. Hynix's April 15, 2002, representation, alleged in paragraph 57, that its increased revenues resulted from increased demand in the DRAM market.

87. Defendants also falsely informed their customers that they were unable to sell their products at a lower price due to increased manufacturing costs, increased prices of labor and of raw materials, and insufficient production capacity.

1 88. Plaintiff had no reason to disbelieve these statements. Furthermore, most
 2 of the explanations provided by Defendants involved non-public and/or proprietary
 3 information completely in Defendants' control such that Plaintiff could not verify their
 4 accuracy. Defendants' purported reasons for their price increases of DRAM were
 5 materially false and misleading and were made for the purpose of concealing Defendants'
 6 anti-competitive scheme as alleged herein. In truth, at all relevant times, the price of
 7 DRAM was artificially inflated and maintained as a direct result of the Defendants' anti-
 8 competitive scheme, the operation of which was a substantial (but undisclosed) factor in
 9 the pricing of DRAM during the relevant period.

10 89. As a result of the fraudulent concealment of the conspiracy, Plaintiff asserts
 11 the tolling of the applicable statute of limitations affecting Plaintiff's claims.

12 **J. Damages/Restitution**

13 90. During the relevant period, Plaintiff purchased DRAM from Defendants, or
 14 their subsidiaries, agents, and/or affiliates, and, by reason of the antitrust violations herein
 15 alleged, paid more for such products than they would have paid in the absence of such
 16 antitrust violations. As a result, Plaintiff has sustained damages to its business and
 17 property and defendants wrongfully acquired money from Plaintiff in an amount to be
 18 determined at trial.

19 **K. Prayer for Relief**

20 WHEREFORE, Plaintiff demands judgment against defendants, and each of them,
 21 as follows:

22 91. A declaration that the unlawful combination and conspiracy alleged herein
 23 is an unreasonable restraint of trade of commerce in violation of: Section 1 of the
 24 Sherman Act, 15 U.S.C. § 1 (2000 suppl. 2); and Sections 16700 *et seq.* and Sections
 25 17200 *et seq.* of the California Business and Professions Code;

26 92. An injunction enjoining, preliminarily and permanently, Defendants and all
 27 those acting in concert or in active participation with Defendants from continuing the
 28 unlawful combination and conspiracy alleged herein;

1 93. An award to Plaintiff of damages, as provided by law and as appropriate,
2 and joint-and-several judgments in favor of Plaintiff against defendants, and each of
3 them, in an amount to be trebled in accordance with federal and California antitrust laws;

4 94. For restitution and disgorgement of revenues, earnings, profits,
5 compensation, and benefits that have been wrongfully taken by defendants from Plaintiff
6 as provided by 17200 *et seq.* of the California Business & Professions Code;

7 95. An award to Plaintiff for the costs of this suit (including expert fees), and
8 reasonable attorneys' fees, as provided by law; and

9 96. An award to Plaintiff for such other and further relief as the nature of this
10 case may require or as this Court deems just, equitable and proper.

11 DATED: February 28, 2007

CROWELL & MORING LLP

12
13 By: 

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DEMAND FOR JURY TRIAL

97. Edge demands a trial by jury, pursuant to Federal Rules of Civil Procedure, Rule 38(b), of all triable issues.

DATED: February 28, 2007

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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

Entity

Interest

A+ Management
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DATED: February 29, 2007

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